



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[212L1109AF LLUTY00000 L12200000.MA0000]

Proposed Supplementary Rule for the Mineral and Hell Roaring Canyons Area of Public Lands and Requirement to Obtain an Individual Special Recreation Permit to Rock Climb within the Moab Canyons Special Wildlife Area (Mineral and Hell Roaring Canyons) Managed by the Moab Field Office in Grand County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule; request for public comments.

SUMMARY: The BLM proposes to establish a supplementary rule prohibiting non-permitted roped and aerial activities, and the construction or installation of temporary structures in and along the walls and rims of Mineral and Hell Roaring canyons, as well as on the canyon walls and rims along the Green River corridor connecting these two canyons. The rule would also prohibit climbing in this area without a permit. The permit system for climbing in the special area and the proposed supplementary rule would protect vital wildlife habitat from increasing encroachment of recreational uses.

DATES: Comments on the proposed supplementary rule must be received or postmarked by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by mail, hand delivery, or email to the BLM Moab Field Office, Attention: Mineral and Hell Roaring, 82 East Dogwood Avenue, Moab, Utah 84532, or kstevens@blm.gov. The proposed supplementary rule and accompanying environmental documents are available for inspection at the BLM

Moab Field Office, 82 East Dogwood Avenue, Moab, Utah, and on the ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/1504945/510>.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Moab Field Office Assistant Manager, 82 East Dogwood Avenue, Moab, Utah 84532, (435) 259-2100, or blm_ut_mb_mail@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion
- IV. Procedural Matters
- V. Proposed Supplementary Rules for the BLM Moab Field Office

I. Public Comment Procedures

Written comments on the proposed supplementary rule must be sent in accordance with the information outlined in the **DATES** and **ADDRESSES** sections of this notification. The BLM is not obligated to consider comments that are received after the close of the comment period (see **DATES**) unless these comments are postmarked or electronically dated before the deadline. The BLM is not obligated to consider comments that are delivered to an address other than that listed above in **ADDRESSES** section. Comments should be specific, confined to issues pertinent to the proposed supplementary rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing. Your address, telephone number, email address, and other personal

identifying information in your comment may be made publicly available at any time. While you can ask in your comment to withhold personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments, including names, addresses, and other contact information of respondents, will be available for public review at the BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, during regular business hours (7:45 a.m. - 4:30 p.m., Monday through Friday, except Federal holidays).

II. Background

The BLM Moab Field Office has jurisdiction from the Grand County, Utah, line to the north, the Utah-Colorado State line to the east, Harts Draw and Lisbon Valley to the south, and the Green River to the west. The public lands managed by the BLM Moab Field Office are an increasing domestic and international tourist destination that host three million visitors per year. Mineral and Hell Roaring canyons provide important habitat for the Mexican spotted owl (a federally threatened species), golden eagles and other raptors, Utah's only endemic herd of desert bighorn sheep, and other wildlife. In recent years, roped and aerial recreational activities have increased, putting wildlife and their prime habitats at risk. The goal of the new Individual Special Recreation Permit (ISRP) requirement for climbing and the proposed supplementary rule prohibiting non-permitted roped and aerial activities is to prevent further recreational encroachment into this prime habitat as these activities are impactful to these species.

In June 2021, the BLM issued a decision record and finding of no significant impact that established a special area in Mineral and Hell Roaring canyons (Moab Canyons Special Wildlife Area), created a permitting system for rock climbing only in the special area. The decision record also outlined the need to establish a supplementary rule prohibiting all other roped and aerial activities within the 10,044-acre special area. In accordance with 43 CFR 2932.11(b)(1), all persons must obtain an ISRP to rock climb in the special

area. The BLM will not issue permits for aerial or roped activities other than climbing. The decision record was supported by an environmental assessment (EA) that analyzed two action alternatives: a total year-round ban on aerial and roped activities, and the institution of a limited seasonal permit system allowing some climbing activity at specified locations. During the 30-day public comment period for the EA, the BLM received 13 comments. Seven comments, including those submitted by the Utah Public Lands Policy Coordinating Office and two non-governmental organizations, supported the total year-round ban on aerial and roped activities in Mineral and Hell Roaring canyons. Six commenters, including the Access Fund and Slackline U.S., opposed some or all of that proposal and expressed an interest in greater access for roped and aerial activities. In response, the BLM established a special area and authorized a permit system that would allow a limited amount of climbing seasonally on specific climbs in designated areas.

III. Discussion

The proposed supplementary rule, which would prohibit roped activities and aerial activities other than climbing under a valid ISRP, is critical to the BLM's ability to manage important wildlife habitat while allowing for sustainable recreational use.

The reasoning for the rule is addressed below.

Proposed rule: Non-permitted roped and aerial activities are disallowed within a 10,044-acre area encompassing Mineral and Hell Roaring canyons. All persons must possess a valid ISRP to engage in climbing within the Mineral and Hell Roaring canyons area. No permits will be issued for aerial or roped activities other than climbing.

Climbing and other aerial and roped activities allow human access into otherwise inaccessible habitats. Other forms of recreation (hiking, driving, camping, horseback riding) and other public uses such as grazing cannot reach those areas. Climbing and other aerial and roped activities adversely affect Mexican spotted owl, golden eagles and

other raptors because climbers and aerialists access the cliffs used by these species for nesting, foraging, and resting. In addition, desert bighorn sheep use the talus slopes below the cliffs accessed by climbers and aerialists as escape terrain for the critical life functions that make herd viability possible. Restrictions have already been placed on motorized vehicle use, camping, grazing, and mineral development in these canyons to protect these species through the 2008 Moab Resource Management Plan.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rule would not have an annual effect of \$100 million or more on the economy. It would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rule would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients; nor does it raise novel legal or policy issues. The supplementary rule merely establishes rules of conduct for public use on a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?
2. Does the supplementary rule contain technical language or jargon that interferes with

their clarity?

3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?

4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The direction for the BLM to establish a supplementary rule prohibiting all other roped and aerial activities within the 10,044-acre special area was proposed, analyzed and authorized in EA DOI-BLM-UT-Y010-2020-0068-EA. The decision includes the details of the permit system which would allow limited climbing on a seasonal basis. The approved EA is available for review at the physical and online locations identified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612), to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rule would merely establish a rule of conduct for public use on a limited area of public lands. Therefore, the BLM has determined that the proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The proposed supplementary rule is not “major” as defined under 5 U.S.C. 804(2). The proposed supplementary rule would merely establish rules of conduct for public use on a limited area of public lands and would not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The proposed supplementary rule would not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than \$100 million per year; nor would it have a significant or unique effect on small governments. The proposed supplementary rule would have no effect on governmental or Tribal entities and would impose no requirements on any of these entities. The proposed supplementary rule would merely establish a rule of conduct for public use on a limited selection of public lands and would not affect Tribal, commercial or business activities of any kind.

Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed supplementary rule does not have significant takings implications, nor is it capable of interfering with constitutionally protected property rights. The proposed supplementary rule would merely establish a rule of conduct for public use on a limited area of public lands and would not affect anyone’s property rights. Therefore, the Department of the Interior has determined that the proposed supplementary rule would not cause a “taking” of private property or require preparation of a takings assessment under this Executive order.

Executive Order 13132, Federalism

The proposed supplementary rule would neither have a substantial direct effect on the

states, the relationship between the Federal Government and the states, nor the distribution of power and responsibilities among the various levels of government. The proposed supplementary rule would not conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that the supplementary rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that the proposed supplementary rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the order.

Executive Order 13175, Consultation and Coordination with Tribal Governments

In accordance with Executive Order 13175, the BLM considered consultation and coordination with Tribal governments in the development of the EA which forms the basis for the proposed supplementary rule. It was determined that this proposed supplementary rule does not have Tribal implications and consultation was not conducted.

Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the proposed supplementary rule would not comprise a significant energy action and that it would not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Federal criminal investigations or prosecutions may result from this rule, and the collection of information for these purposes is exempt from the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1).

Authors

The principal authors of these supplementary rules are Kathleen Stevens, outdoor recreation planner, and Pam Riddle, wildlife biologist, Moab Field Office, Bureau of Land Management.

V. Proposed Supplementary Rule for the BLM Moab Field Office

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740 and 43 CFR 8365.1-6, the Utah State Director is proposing the following supplementary rule:

1. Non-permitted roped and aerial activities are prohibited within a 10,044-acre area encompassing Mineral and Hell Roaring canyons.
2. All climbers must be in possession of a permit to engage in climbing within the Mineral and Hell Roaring canyons area.
3. The construction or installation of temporary structures in and along the walls and rims of Mineral and Hell Roaring canyons, as well as on the canyon walls and rims along the Green River corridor connecting these two canyons is prohibited.

Definitions

Roped Activities: Activities involving ropes, cable, vectran, climbing aids, webbing, anchors, or any other similar materials. Activities include: ziplining, high-lining, slacklining, rope-swinging, and other activities using the roped materials listed and other associated equipment.

Aerial Activities: Sporting pursuits which include “building, antenna, spam and earth” (BASE) jumping, catapulting, paragliding, paramotoring, parachuting, skydiving, drone launching, aerial delivery, or other activities that involve aerial delivery, recovery or shuttle.

Climbing: A sport or technique in which participants climb up, down, or across natural rock formations, usually with ropes and other equipment. This also includes free-soloing and bouldering.

Penalties

On public lands under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), and 43 CFR 8360.0-7, any person who violates this supplementary rule may be tried before a U.S. magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S. C. 3571.

Exemptions

Any Federal, State, local or military persons acting within the scope of their duties, and members of an organized rescue or firefighting force in performance of an official duty are exempted from this supplementary rule.

List of Subjects 43 CFR Part 8360

Penalties, Public lands, Recreation and recreation areas.

Gregory Sheehan,

State Director.

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